HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.867 of 2006

Date: 29th December, 2006

Between :-

A.V.Laxmi Raghav .. Petitioner

And

The Municipal Council,
Adilabad Municipality
Rep. by its Commissioner,
Adilabad District. ..
Respondent

HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.867 of 2006

ORDER:-

1. Heard Sri B.Sudhakar Reddy, the learned Counsel representing the writ petitioner and Sri Polisetti Radhakrishna, the learned standing Counsel representing the respondent.

2. This Court issued *rule nisi* on 17-1-2006 and in W.P.M.P. No.1020/2006 *status quo* was directed to be maintained. The respondent filed W.V.M.P.No.1163/2006 to vacate the aforesaid *status quo* order made by this Court.

3. At the request of the Counsel on record, the Writ Petition itself is being disposed of finally.

4. The Writ Petition is filed praying for the relief of Writ of Mandamus calling for records pertaining to R.O.C.No.g1/1353/89-2005, dt.10-1-2006 on the file of respondent and set aside the same as being illegal and contrary to the Miscellaneous receipt dt.5-9-2005 issued by the 1st respondent and consequently declare the action of the 1st respondent in issuing the impugned order, dt.10-1-2006 as *mala fide*, illegal and in violation of principles of natural justice and further direct the respondent to allow the petitioner to operate the Venkateshwara Saw Mill, Bhoktapur, Adilabad

Municipality, Adilabad till the end of the lease period i.e., 31-3-2007 and pass such other suitable orders.

5. It is stated that the petitioner is owner and possessor of Sri Venkateshwara Saw Mill, Bhoktapur Locality, Adilabad Town & Municipality since 1968 and the respondent had granted lease of the Municipal land admeasuring 100" x 150 bounded by East – Municipal road; West – Road and Amba Bhavan; North – Ajit Singh Saw Mill; and South – Municipal road. It is also stated that the lease of the above land was given to the petitioner because he was running Small Scale Industrial Unit and she had been granted lease along with others in 1968 and she had been running the Saw Mill to the utmost satisfaction of the respondent Department and also the Forest Department. It is also further stated that the respondent also passed Resolution No.37 in the year 1988 for renewing the lease for 5 years. The Government of A.P. thereupon issued G.O.Ms.No.617 M.A., dt.10-11-1992 cancelling the lease granted in the year 1988. It is also stated that questioning the said G.O., the petitioner filed W.P.No.2965/1993 and this Court granted interim suspension of G.O.Ms.No.617 M.A., dt.10-11-1992 in W.P.M.P.No.3577/93 on 15-3-1993. It is also stated that the respondent did not file any vacate application but filed only counter affidavit and the said Writ Petition was

ultimately dismissed on 28-6-2002, but while dismissing the said Writ Petition, this Court gave liberty to the petitioner to submit a representation to grant patta in terms of G.O.Ms.No.1161 M.A., dt.28-10-1981. Accordingly, the writ petitioner made a representation on 16-7-2002 and the same is said to be pending with the respondent – Municipality. It is also further stated that the respondent issued impugned order in R.O.C.No.G1/1353/89-2005, dt.10-1-2006 calling upon the petitioner to remove all the structures and hand over the vacant possession to the respondent within seven days and immediately the petitioner submitted a representation to the eviction notice dt.10-1-2006 stating that her lease is valid upto 31-3-2007 and that the petitioner had also obtained permission from the Forest Department to run the Saw Mill till 31-3-2007 basing on the lease granted by the respondent. It is stated that the respondent received the said representation dt.12-1-2006 but informed the petitioner orally that the Eviction Notice dt.10-1-2006 is final and have to removal the structures by 17-1-2006 or else the respondent Municipality will demolish the structures and take over the possession of the property in question. It is also stated that the Eviction Notice dt.10-1-2006 is bad in law and violative of principles of natural justice. It is also

further stated that the respondent Municipality having received the lease amount of Rs.10,140/- on 5-9-2005, having extended the same, is not justified in issuing the impugned notice due to political pressure. Several other factual details also are narrated in para 5 of the affidavit filed in support of the Writ Petition.

6. In the counter affidavit filed by the respondent, it is stated that the Municipal Council vide its Resolution No.604, dt.10-7-1968 had resolved to allot the Municipal land admeasuring 100' x 150' on monthly rent of Rs.50/- per month for a period of one year for running Saw Mill to the petitioner and after expiry of the said lease period, the respondent Office issued a notice to the petitioner to vacate the land and on the request of the petitioner, the Council vide its Resolution No.716, dt.20-7-1990 had extended the lease period upto 31-3-1971 which was further extended for one year upto 31-3-1973 and thereupon for a period of 3 years i.e., 30-11-1983 by enhancing the lease rent of Rs.200/- per month vide Resolution No.281, dt.30-11-1983. It is further stated that Municipal Council vide Resolution No.37, dt.31-5-1988 had extended the lease for a period of 5 years @ Rs.200/- per month without enhancing the lease rent @ Rs.33 1/3 above the existing rent as required under Rule 5(2) of Lease Rules pertaining to Receipt and Expenditure Rules

of A.P. Municipalities Act, 1965. It is stated that the said Resolution passed by the Municipal council was contrary to Lease Rules and also against the Financial Interest of the Municipality and hence the Municipality had brought the matter to the notice of the Government for cancellation of the Council Resolution and the Government after careful examination had issued show cause notice to the Council vide Memo No.1969/11/91-2-M.A., dt.4-6-1992 to show cause why the said Resolution should not be cancelled. The matter had been placed before the Municipal Council meeting held on 17-7-1992 wherein the Council in its Resolution No.13, dt.17-7-1992 had recommended the Government to cancel the Resolution No.37, dt.31-5-1988 as it was passed against the interest of the Municipality and contrary to the Lease Rules. The Government having re-examined the matter, cancelled the Resolution No.37, dt.31-5-1988 vide G.O.Ms.No.617, M.A., dt.10-11-1992. Accordingly, the Municipality while informing the petitioner about cancellation of resolution, had issued 3 days Notice directing the petitioner to vacate the Municipal land i.e., Saw Mill vide office notice No.G1/1353/81-92, dt.4-12-1992. It is stated that the petitioner approached this Court by filing Writ Petition No.2765/1993 challenging the validity of the notice and

praying for issuance of orders to grant Patta Certificate in terms of G.O.Ms.No.1161 M.A., dt.28-10-1981 and the said Writ Petition was dismissed on 28-6-2002. It is also stated that the five years extension of lease granted by the Municipality vide its Resolution No.37, dt.31-5-1988 already had expired on 30-5-1993. It is also further stated that G.O.Ms.No.1161, M.A., dt.28-10-1981 pertains to issue of house-site pattas to the unobjectional eligible encroachers in Bhoktapur locality, Adilabad, which is present not in force and the said G.O. relates to issue of pattas for dwelling houses and not for commercial purpose and hence the said G.O. is not applicable to the present case. It is also further stated that the proposed site is earmarked for residential purpose as per sanctioned Master Plan of Adilabad Municipality and residential houses had been developed all around the suit land. It is also further stated that several complaints are being received from the locality people through Chief Minister's Peshi and District Collectorate Citizen Interface to stop the running of the Saw Mill in the residential zone and as such no industry shall be allowed to develop in the residential zone which is endangerous to the human life and health point of view which is causing air pollution from the Saw dust coming from the Saw Mill. It is also stated that running of Industries & Saw Mills etc., are not

permissible in the Residential Zone as per the Zoning Rules and Regulation of Town Planning issued in G.O.Ms.No.297 Housing M.A. & U.D. (1-1) (M.A.) dt.20-5-1988 and more over the suit land is centrally located and highly valuable land which may fetch more than Rs.50 lakhs and above if auctioned in public. It is further stated that the Government in its G.O.Ms.No.419, dt.13-8-1996 had directed that no Municipal lands shall be given for any private or any other purpose and should be utilized for remunerative schemes i.e., Shopping etc., and to earn income and hence, the petitioner is not eligible for issue of Patta certificate for the suit land. It is also further stated that in the same locality, where the suit land exists, the Municipality had allotted another piece of Municipal land measuring 100' x 100' to one Sardar Ajit Singh for running Saw Mill in the year 1971 and the said lease was continued up to 1986. It is stated that later the Municipal Council enhanced the lease for a period o5 years upto 11-4-1992 without enhancing the lease rent as was done in the case of the petitioner. It is also stated that similarly the Government vide G.O.Ms.No.277, M.A., dt.28-4-1992 had cancelled the Municipal Council Resolution which had been passed against the financial interest of the Municipality as done in the case of the petitioner. It is also

stated that upon issuance of eviction notice by the respondent, the lessee filed W.P.No.15414/1992 before this Court challenging the eviction notice and prayed for issuance of order for grant of Patta as per G.O.Ms.No.1161 M.A., dt.28-10-1981 and this Court dismissed the said Writ Petition on 4-3-2004 and made the following order:-

> *"That it is difficult to discern as to under what law and authority; the petitioner can insist to continue to be in possession of the land which admittedly belongs to the Municipality. The Court observed that in exercise of its jurisdiction under Article 226 of the Constitution of India, it cannot issue any Writ of Mandamus compelling the Municipality to part away with its own land by way of lease or exchange or mortgage as the case may be. However, having regard to the nature of long standing possession of the petitioner, the Hob'ble Court considered it appropriate to direct the Commissioner, Municipal Council, Adilabad not to take any coercive steps for a period of six months from the date of issue of Court orders so as to enable the petitioner to remove the Saw Mill and hand over the vacant possession thereon to the Municipality". In the light of the above, Hon'ble High Court orders issued in W.P.No.15414, dt.4-3-2004, this Municipality issued Eviction Notice to the petitioner to vacate the Municipal land within the time granted by the Hon'ble High Court at Hyderabad. Accordingly, Sardar Ajit Singh, the petitioner has handed over the vacant possession of the suit land to this*

Municipality."

Further specific stand that the suit land belongs to the Municipality and the lease period expired long back but however still the petitioner is continuing in illegal possession of the land without any right whatsoever.

7. In the light of the facts and circumstances which had been explained by the respective Counsel and also in the light of the view expressed by this Court in similar matter in W.P.No.15414/1992 dt.4-3-2004, this Court is of the considered opinion that the Writ Petition is devoid of merit and accordingly the same shall stand dismissed. However, in the peculiar facts of the case, inasmuch as it is stated that the machinery is there, the writ petitioner is granted time till the end of March, 2007 to vacate the premises without requesting for any further extension whatsoever. It is made clear that the petitioner is permitted to continue on the premises in question till the end of March, 2007 on filing an undertaking before the Municipal Commissioner, Adilabad, within a period of four weeks from today.

8. With the above observation, the Writ Petition shall stand dismissed. No order as to costs.

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Justice P.S.Narayana

29th December, 2006

smr